STATE OF MICHIGAN

COURT OF APPEALS

FREEDOM VILLAGE OF HOLLAND,

Petitioner-Appellee/Cross-Appellant,

v

CITY OF HOLLAND,

Respondent-Appellant/Cross-Appellee.

UNPUBLISHED
June 24, 2003

No. 230853
Michigan Tax Tribunal
LC No. 00-170827

Before: Fitzgerald, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Respondent appeals of right from an order of the Michigan Tax Tribunal, which was issued on remand from this Court's decision in *Freedom Village of Holland v Holland*, unpublished opinion per curiam of the Court of Appeals, issued April 24, 1998 (Docket No. 192090) (*Freedom Village I*). Petitioner has cross-appealed, raising issues that were raised and decided by this Court in that previous appeal. This case concerns a tax assessment made by respondent on the senior retirement facility constructed and operated by petitioner. We affirm.

I.

The relevant facts were set forth in this Court's previous opinion:

> The commercial property at issue is a retirement housing complex for senior citizens located in Holland, Michigan. The property is located on a site containing approximately eleven acres, of which approximately 9.2 acres relates to the retirement community. The subject property includes a 501,959 square foot, seven-story senior citizen apartment complex, which was constructed in 1990 and 1991, and includes 347 rentable units and seven guest rooms. The building also contains common use areas which include a two-story theater, central dining facilities, a full-service bank, a barber shop, laundry rooms, a gift shop, a medical clinic, a delicatessen, a convenience store, a library, an exercise room/gymnasium, an indoor heated pool and spa, an auditorium, a post office, a billiards room, a woodworking shop, and a meditation chapel. The final construction cost of the property, as of December 31, 1992, was $31,500,000.

The subject property generates revenue from four primary sources: entry fees, resident service fees, resident services, and interest income. The entry fee is a lump sum deposit paid by a resident upon execution of the residency agreement. In most cases, the resident's estate is refunded half of the entrance fee upon the resident's death. Initial entry fees for the property range from $35,000 for a one-bedroom efficiency (452 square feet) to $146,000 for a two-bedroom suite (1,750 square feet). The average entry fee paid by the initial residents was $85,050 for 1991 and $90,200 for 1992. In exchange, the residents receive health care and related services, insurance-type benefits, and occupancy at the subject property.

Residents are also charged monthly "service fees" to cover operating and maintenance costs at the subject property. Resident service fees are based upon the size of the apartment unit, the location of the unit, and the number of unit occupants. Initial service fees ranged from $750 per month for an efficiency and $1,325 per month for a two-bedroom suite. A charge of $400 per month was added for additional occupants. "Other resident services" include rent from the beauty parlor/barber shop and income from guest meals, guest rooms, the delicatessen and general store. Petitioner also generates revenue from interest income.

Petitioner contended that the true cash value of the real property was $12,747,400 in 1992 and $13,646,000 for 1993. Respondent, in contrast, assessed the property at $27,500,000 in 1992 and $32,000,000 for 1993. After rejecting both parties' appraisals, the hearing referee made an independent assessment of the true cash value of the property based on the evidence presented. The referee determined that the income derived from the entry fees was business value that was properly excluded from the taxable property, but that income derived from the monthly service fees should be included as a relevant factor in determining what the property would sell for. The referee rejected petitioner's contention that the building should be valued as if vacant and available for sale, and found that the unit rental prices projected in petitioner's appraisal required an upward adjustment to account for the modernity of the facility and its superior construction and amenities. After making deductions for operating expenses and petitioner's cost to complete the facility in 1992, the hearing referee arrived at a true cash value for the property of $23,716,000 in 1992 and $24,159,200 in 1993. These revised assessments were affirmed by the Tribunal. [*Freedom Village I*, *supra* at p 1.[1]]

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[1] We ruled as follows in *Freedom Village I*:

> The Tribunal utilized the 15.5% capitalization rate recommended in petitioner's appraisal. That capitalization rate included a 3% addition to account for property taxes; however, it is not clear form the record whether the taxes taken into account included the underlying real estate taxes as well as the personal

(continued…)

On remand, the tribunal revised its earlier "Final opinion and judgment" by determining the sole issue for which the case was remanded: "[W]hether the deduction of operating expenses should have additionally deducted real estate taxes for the underlying leased land – as part of the process for removal of the leased land prior to capitalization of net income." The tribunal concluded that its prior decision was flawed because it had failed to deduct the property taxes that were due on the underlying leased land. Finding that sufficient and substantial evidence was already contained in the record from which an accurate determination could be made, the tribunal recalculated the tax assessment.[2] With regard to the issue raised in the present appeal, the tribunal used the statutory language from MCL 205.737(4), to order that:

> A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Order on Remand.

The tribunal denied respondent's motion for reconsideration.

II.

Petitioner's first and second issues are intertwined, so we will address them together. Petitioner contends that the Tax Tribunal erred in deciding in its final order on remand that respondent was not entitled to collect statutory interest on the increase in state equalized value accruing since the Tax Tribunal's final opinion and judgment. Petitioner makes this contention because it believes that the Tax Tribunal's first decision was the operative one for purposes of calculating interest, regardless of the fact that the tribunal adjusted the decision after remand by this Court. We disagree.

Our review of the Tax Tribunal's decision is limited:

> In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation. [Const 1963, art 6, § 28.]

(…continued)

> property being valued. Consequently, the Tribunal's determination that the 3% increase in the capitalization rate included real estate taxes is not supported by substantial evidence. Consequently, we find it necessary to remand this case to the Tribunal for consideration of the extent to which petitioner's payment of real estate taxes may affect the valuation of the property. [*Freedom Village I, supra* at p 2.]

[2] Neither party contests the fact of the tribunal's recalculation in the present appeal.

We are also mindful that an issue of statutory interpretation is reviewed de novo. *McAuley v Gen Motors Corp*, 457 Mich 513, 518; 578 NW2d 282 (1998). In *Roberts v Mescosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002), our Supreme Court summarized the basic principles of statutory interpretation:

> An anchoring rule of jurisprudence, and the foremost rule of statutory construction, is that courts are to effect the intent of the Legislature. *People v Wager*, 460 Mich 118, 123 n 7; 594 NW2d 487 (1999). To do so, we begin with an examination of the language of the statute. *Wickens v Oakwood Healthcare Sys*, 465 Mich 53, 60; 631 NW2d 686 (2001). If the statute's language is clear and unambiguous, then we assume that the Legislature intended its plain meaning and the statute is enforced as written. *People v Stone*, 463 Mich 558, 562; 621 NW2d 702 (2001). A necessary corollary of these principles is that a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself. *Omne Financial, Inc v Shacks, Inc*, 460 Mich 305, 311; 596 NW2d 591 (1999).

The statutory language at issue is contained in MCL 205.737(2), which provides, in relevant part:

> A sum determined by the tribunal to have been unlawfully paid or underpaid shall bear interest from the date of payment to the *date of judgment* and *the judgment* shall bear interest to date of its payment. However, a sum determined by the tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the *tribunal's decision*. [Emphasis supplied.]

In addition, the Tax Tribunal relied on the following provision to determine whether its first judgment or judgment on remand was the proper judgment from which to calculate interest: "A decision and order of the tribunal is final and conclusive on all parties, unless reversed, remanded, or modified on appeal." MCL 205.752(1).

We agree with the tribunal that because these statutes are part of the same scheme, they may be read in pari materia, or as one law. See *State Treasurer v Schuster*, 456 Mich 408, 417; 572 NW2d 628 (1998). The plain language of these statutes is that the final decision and order of the tribunal is the one issued after a remand, if any. See *Roberts*, *supra*. Because the case was remanded after the first Tax Tribunal decision, the second decision was the final order. MCL 205.752(1). Thus, interest may be calculated only from this latter decision. MCL 205.737(2). Therefore, we cannot say that the Tax Tribunal committed a "fraud, error of law or . . . adopt[ed] . . . [a] wrong principle[]" in this matter. Const 1963, art 6, § 28.

III.

The third and final issue is petitioner's claim in its cross-appeal that the Tax Tribunal and this Court, in their rulings previous to remand, erred in several respects concerning specific

factors in calculation. We disagree and hold that we are precluded by the law of the case doctrine from reconsidering issues that were already decided in the previous appeal.

Whether the law of the case doctrine applies is a legal question that is reviewed de novo. *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001), citing *Kalamazoo v Dep't of Corrections*, 229 Mich App 132, 135; 580 NW2d 475 (1998).

> The law of the case doctrine holds that a ruling by an appellate court on a particular issue binds the appellate court and all lower tribunals with respect to that issue. . . . Thus, a question of law decided by an appellate court will not be decided differently on remand or in a subsequent appeal in the same case. [*Ashker*, *supra* at 13, citing *Driver v Hanley*, 226 Mich App 558, 565; 575 NW2d 31 (1997).]

In its cross-appeal, petitioner points to alleged errors involving market rent conclusions, cost to cure adjustments, valuation, the assessment level, and the burden of proof. These issues were presented to this Court in petitioner's previous appeal and they were decided by this Court. See *Freedom Village of Holland*, *supra* at pp 3-5.[3] Because the law of the case doctrine precludes us from reconsidering these issues, we affirm the Tax Tribunal's decision in this regard as well.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell

[3] Petitioner acknowledges that reconsideration of these issues is barred by the law of the case doctrine and contends that it is only raising the issues to preserve them for future appeal to our Supreme Court. Petitioner applied for leave to appeal following this Court's previous decision concerning the same issues presented here, but our Supreme Court denied leave "because [it was] not persuaded that the questions presented should be reviewed by this Court prior to the proceedings ordered by the Court of Appeals and any further subsequent review by the Court of Appeals." Therefore, to the extent that petitioner only attempts to ensure that the issues are preserved for future review in our Supreme Court, we will consider the issues preserved for appellate review – although not capable of further review in this Court.